

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 6

Notice and Time Requirements in Delinquency Proceedings

6.5 Issuance and Service of Summons

B. Manner of Service of Summons

Near the middle of page 121, insert the following paragraph immediately before subsection (C):

In *In re Zaherniak*, ___ Mich App ___, ___ (2004), the Court of Appeals discussed an apparent conflict between MCR 3.920 and MCL 712A.13. MCR 3.920(B)(4)(b) provides that the court may find “on the basis of testimony or a motion and affidavit” that personal service cannot be made, and the court may then order substitute service. MCL 712A.13 also provides for substitute service; however, MCL 712A.13 does not require the court to make its findings based upon testimony or an affidavit. In *Zaherniak*, the petitioner was unable to personally serve the respondent with notice of the hearing on termination of parental rights. At a hearing in the respondent’s absence, the trial court suggested that the petitioner file an affidavit of diligent effort, and the court would order service by publication. The petitioner filed a motion for alternate service without a proper affidavit. The court did not take any testimony regarding the motion before issuing its order for service by publication. After publication, termination proceedings were held and the respondent’s parental rights were terminated. The respondent appealed, claiming that the court improperly allowed service by publication and therefore lacked jurisdiction over her. The respondent argued that the petitioner’s motion was defective because it failed to specify facts to support an order for substitute service.

The Court of Appeals held that MCL 712A.13, not MCR 3.920, controls the determination of whether a court has established jurisdiction over a respondent:

“We believe that MCL 712A.13 reflects our Legislature’s policy considerations concerning the necessary requirements for obtaining jurisdiction over a parent or guardian of a juvenile. Because the issue of service is a jurisdictional one, the statutory provision governs. The plain language of the statute contains no specific requirements concerning what types of evidence a court must consider in determining whether substitute service is indicated, or the form in which the evidence must be received. By its silence, MCL 712A.13 permits a court to evaluate evidence other than testimony or a motion and affidavit when determining whether notice can be made by substituted service. We believe that the recently amended court rule requirements now found in MCR 3.920(B)(4)(b) are restrictions affecting jurisdiction in matters that are usually time-sensitive and for which the Legislature’s policy is to seek prompt resolution for the sake of the juvenile involved, and as such conflict with MCL 712A.13. Therefore, the statute prevails.”

The Court of Appeals concluded that the trial court did not err in relying upon the petitioner’s motion for alternate service and documents in the court file regarding previous failures to serve the respondent.

CHAPTER 11

Paying the Costs of Juvenile Proceedings

11.2 Orders for Reimbursement of the Costs of Care or Services When a Juvenile Is Placed Outside the Home

Insert the following text after the last paragraph on the bottom of page 270:

A stepfather does not qualify as a “custodian” for the purposes of ordering reimbursement pursuant to MCL 712A.18(2). In *In re Hudson*, ___ Mich App ___, ___ (2004), a stepfather was ordered to pay the cost of his stepdaughter’s care and legal representation. The Probate Code does not define “custodian.” However, the Court of Appeals noted that “custodian” has a specific legal meaning as provided in the Michigan Uniform Transfer to Minors Act, MCL 554.521 et seq. Under that act, “one does not become a ‘custodian’ without acquiring, under clearly articulated circumstances, legal possession of a minor’s property which is then held in trust for the child.” *Hudson, supra* at ___. The Court concluded that because the stepfather was not a financial ‘custodian’ as specifically defined in the Michigan Uniform Transfer to Minors Act, he could not be ordered to reimburse the court for the juvenile’s cost of care or out-of-home placement.